

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re)	Chapter 11
)	
DELPHI CORPORATION, <i>et al.</i> ,)	Case No. 05-44481
)	Hon. Robert D. Drain
Debtors.)	
_____)	

**ECLIPSE TOOL & DIE, INC.'S MOTION
FOR RELIEF FROM AUTOMATIC STAY**

Eclipse Tool & Die, Inc., by and through its attorneys Bolhouse, Vander Hulst, Risko & Baar P.C., for its Motion for Relief from the Automatic Stay provisions of the Federal Bankruptcy Code, states as follows:

1. Eclipse Tool & Die, Inc. ("Eclipse") is a corporation existing under the laws of the State of Michigan and maintains an office at 4713 Circuit Court, Wayland, Michigan 49348.
2. The Debtor Delphi Corporation (hereinafter "Delphi") maintains an office at 5725 Delphi Drive, Troy, Michigan 48098.
3. On October 8, 2005, Delphi commenced a case under Chapter 11 of the Federal Bank Code, Case No. 05-44481, in the Southern District of New York.
4. Eclipse holds an valid secured lien pursuant to the Michigan Special Tools Lien Act in the amount of One Hundred Twenty Three Thousand One Hundred Thirty Dollars and 00/100 (\$123,130.00), plus interest, late charges,

costs, and attorney fees regarding Part Number 22209497 which is owned by Delphi.

5. Eclipse's secured claim arises from the design, manufacture, fabrication and repairs performed on Part Number 22209497.

6. Eclipse entered into an agreement with Metalforming Technologies Inc. ("MTI") for the fabrication, repairs, and/or modification of Part Number 22209497 which is evidenced by MTI's purchase orders and Eclipse's invoices (See attached **Exhibit A**).

7. Even though Part Number 22209497 was produced pursuant to an agreement between Eclipse and MTI the owner of Part Number 22209497 is Delphi. (See attached as **Exhibit B**).

8. Delphi and MTI entered into an agreement for the fabrication of Part Number 22209497 in order for MTI to produce automobile parts for Delphi. (See **Exhibit B**).

9. Pursuant to the agreement between Delphi and MTI the tools, including Part Number 22209497, used by MTI in the production of parts for Delphi are the property of Delphi. (See **Exhibit B**).

10. Eclipse's claim is secured by a valid and perfected lien pursuant to Michigan's Special Tools Lien Act, MCL 570.541 et al. (See attached as **Exhibit C**).

11. Pursuant to Michigan's Special Tools Lien Act, MCL 570.563, Eclipse was required to: (1) permanently record on Part Number 22209497 Eclipse's

name, street address, city and state, and (2) file a UCC-1 Financing Statement with the Michigan Secretary of State (See **Exhibit C**).

12. Further, under the Michigan Special Tools Lien Act, MCL 570.565, Eclipse Tool & Die, Inc. is required to give notice of the lien in writing to Delphi, stating that the lien is claimed, the amount that is owed for the fabrication, modification and/or repairs and make a demand for payment. (See **Exhibit C**).

13. The Michigan Specials Tools Lien Act, MCL 570.567, states that if Eclipse, as the Special Tool Builder, has not been paid the amount claimed within 90 days after the notice was received, Eclipse has the right to possession of Part Number 22209497 and may enforce the right-to-possession by judgment, foreclosure, **or any available judicial procedure**. (See **Exhibit C**).

14. Before shipping Part Number 22209497 to MTI, Eclipse permanently affixed its name, street address, city and state on Part Number 22209497, and filed a UCC-1 Financing Statement with the Michigan Secretary of State in accordance with the requirements of Section 9502 of the Uniform Commercial Code, as adopted by the State of Michigan. (See attached as **Exhibit D (Photograph of Eclipse's stamp on Part Number 22209497) and Exhibit E (UCC- Financing Statement)**).

15. To date, Eclipse has not been paid for the design, fabrication, modification and/or repairs of Part Number 22209497.

16. On information and belief, Part Number 22209497 that Eclipse fabricated, repaired, and/or modified is located in an MTI plant in Michigan that is currently in the process of being sold to Zohar Tubulars.

17. On information and belief, Part Number 22209497 is currently being used by MTI (and soon to be Zohar Tubulars) to manufacture automobile parts for Delphi in Michigan.

18. On October 6, 2005, and pursuant to the Michigan Special Tools Lien Act, MCL 570.565, via certified mail--return receipt, Eclipse timely and properly notified Delphi of its lien rights to Part Number 22209497. (See attached as **Exhibit F**).

19. By operation of the Michigan Special Tools Lien Act, Delphi is required to pay the amount due and owing for the design, fabrication, modification and/or repairs to Part Number 22209497 to Eclipse on or before January 6, 2006. (See **Exhibit B**).

20. To date, no payment has been forthcoming.

21. If Delphi fails and/or refuses to pay the amounts owed for the design, fabrication, modification and/or repairs to Part Number 22209497, Eclipse has a right to possession of Part Number 22209497 by operation of law under the Michigan Special Tools Lien Act, MCL 570.563. (See **Exhibit B**).

22. If Delphi fails and/or refuses to pay the amount owed, then on January 6, 2006, Eclipse will have a statutory right of possession of Part Number 22209497, and may enforce this right of possession "by judgment, foreclosure, **or any available judicial procedure.**" MCL 570.567 (See **Exhibit B**).

23. The Michigan Special Tools Lien Act was designed to protect Special Tool Builders such as Eclipse by giving them a non-possessory lien against the special tools that they fabricate, modify or repair so that, upon non-payment, the

Special Tools Builders will have sufficient leverage behind their demand for payment to recover their outstanding indebtedness.

24. Therefore, Eclipse is entitled to enforce its lien to gain immediate possession of Part Number 22209497 if payment in full is not remitted to them.

WHEREFORE, Eclipse Tool & Die Inc. requests that the Court enter an order:

1. Granting relief from the automatic stay provisions of the Federal Bankruptcy Court to allow Eclipse Tool & Die, Inc. to enforce its lien on Part Number 22209497 owned by Delphi Corporation and fabricated, repaired, and/or modified by Eclipse Tool and Die Inc. under applicable non-bankruptcy law;

2. Prohibit Delphi Corporation, and any future trustee from using, leasing or selling the special tools in absence of adequate protection for Eclipse Tool & Die, Inc.'s lien; and

3. Grant any and all other relief that the Court deems just and proper (See attached at **Exhibit G**).

Respectfully submitted,

Dated: November 9, 2005

BOLHOUSE, VANDER HULST,
RISKO & BAAR P.C.

By: /s/ David S. Lefere

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